Collection: Council of Economic Advisors: Staff Economists Records, Series I: B – (Steve De Canio)
Folder Title: Telephone Comments (2 of 2)
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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS

DATE:

TO:

FROM:

First Round

Bruce Johnson

State disability - flat rate in CA. - N. large firm, small firm.

~~Unemployment~~ is ~~[illegible]~~ experience rated.

Last yr., .6% emp to 21,000

up to .9%

1.2% in 1987

With unemployment, you start at the highest, go down with experience.

James - disability ∃ no longer qualified for ~~[illegible]~~ the job. So, if fired for cause, employee is still eligible for unemployment.

6880 - John. Morrall

NHTSA - collapsable steering column.

FDA - banned DES in cattle feed.

OSHA - lowers formaldehyde from 3 pts per million over 8 hrs. to ~~[illegible]~~ 1.5 parts per million over 8 hrs.

Data based on animal studies. Use best estimate rather than 95% upper bound. Dose-response model is non linear.

Real reason is that risks become marginal.

OSHA's ~~[illegible]~~ Underground construction — ~~[illegible]~~ set of requirements for tunnelling, etc. Quite reasonable.

EPA - Trihalomethanes - incl. chloroform — ~~[illegible]~~ take out of drinking water by filtration.

EPA Land disposal - putting double liners around land disposal of hazardous waste. Required by Superfund Act.

Asbestos 1982 EPA - banning 5 uses of asbestos + phasing out over 10 yrs. (Incl. brake linings)

12/24/86

Robin Miles-McLean

Having trouble verifying.

EPA not happy about initial risk # instead of maximum individual risk number.

One of the benzene #s is off by an order of magnitude.

2.1x10-5 for line 19 – benzene.

Other real problem: Arsenic #s.
These were not divided by source
Source categories
lines 23 + line 34.
Do not correspond to ranges.
Off by several orders of magnitude.

Also copper smelters
lines 25 + 40.

What she did was to get #s from Fed. Reg.

Can't get verification yet on Land Disposal (#42) + Trihalomethanes (#7)

Put this in.

(*) [EPA usually uses max. lifetime risk, + does not

Call in an ~~official~~ capacity, but is a Chicago Economist

Comments on

Walt Francis, Office of Secy, HHS
works for Bob Helms?, 245-0291

p.9 We need badly a couple of ¶ of the economic basis of reg when externalities present.

p.12 Consider pull out last 2 yrs of Reg Mag for examples. More common is coal vs nuclear, E(deaths) coal > E(d) nuclear. Better example. ~~Also good example~~
the

p.19-20 to perfect arg, use sentence "paradoxically, a ban would lower P + ↑ smoking"

p.26 "realized" spelled wrong
p.27 gallup poll, on speed limits, actual data avail from avg actual speed 57, then 58, then 64 (~~Actual~~ speeds are rising. This was a cabinet council mtg a couple of mos ago. Data is better than polls. NAS did a study: Author Demian Kulash. ~~Phone~~

p.22 Complete the thought at end of 1st ¶ on externalities + drunk driving.

General: address argument of social risk-bearing + how many ~~are~~ inherently non-external probs are made external by social insurance.

Also: Marginal vs. Total on pollution, safety, etc...

~~p.31 Variance in speed 55 vs 65 on the same r~~

p.33 1st ¶ has problem, esp 1st sentence. We just finished saying the gov't puts people in smaller cars + kills them

[illegible]
p.35 1st ¶, strict reg? or liability. (?)

p.45 & 1st word from involved to in.
p.50 last ¶ – too facile, costs of info, hey, come on. info is a public good.

p.53 2/3 down page. "Years later It became known" + add – banned by the same CPSC that mandated its use.

General – he loves our examples. Use the child-proof cap example, too. People don't put the bottles away. Research in Reg Magazine. No ↓ in aspirin poisoning.

p.54 ~~demonstrably~~? substantially.

p.54 Drugs – many errors of fact. Worst section

Need ¶ on market failure justifying gov't reg. He thinks gov't has a role.

p.56 Not true that testing abroad is not permitted. Hard, but possible. Delete.

p.57 last ¶ false 1st sentence, ¶ should be deleted. Dumb and wrong + unbalanced.

don't criticize controlled research
Argument is not sophisticated as presented. Irrelevant + wrong. Not worth arguing about

Author does not know about
"Drug Price Competition + Patent Restoration Act"

Go find out. Again read Reg Mag.

P.3

"Accidental death rates <u>at</u> work" should read Work-Accident death rates since measure includes auto death

Add
Tom's
point?
p. 23

Ted Frech 12/29/86

p.2. Start with accident rates. Graph better.

p.4. Expand 4th sentence.

p.6. Give examples of ~~suspect~~ companies. [But can't name companies.] Not powerful. Drop examples of products.

p.7. Expand on how torts force causers of harm to bear costs. User is by far more important for mechanical prods, as opposed to drugs.

p.8. "Certification": CPA's, RN's. prohibition to practice: pilots, MD's. private rules, also certifies, as underwriters' seal.

p. 11 Consistency not complete because of age of victim, paralysis

p. 12. windmill #s. Coal vs. nuclear better.

p. 14 22 billion should go.

(*) p. 20. Top. Fuchs book on The Health Economy. ¶ should go. Look at this.

p. 22. "alcohol involved." What does this mean? Had 1 drink.

p. 25. Why shouldn't it be contrib. negligence?

p. 26. More on airbags –
(1) No help in multiple impacts
(2) Failures are more dangerous.

p. 28 1st ¶, last sentence. If it were costless. Same speed limit bu.

p. 29. Not a std. of care. SL may be optimal.

p. 29 citizens + wishes and local conditions.

Torts – user is main cause of mech. accidents.

p. 43 top – 2 separate effects.

p. 45. "Even if it must be expensive" not exorbitant.

p. 46, bottom — "Punitive dam." a new idea.

p. 51. Safety info provided in the [illegible] by [illegible]. as well as testing

p. 61, bottom Workers who are more risk averse.

p. 67. Workers remedies under tort liability have been constrained since the intro of WC."

p. 70 Spell out accident prevention services. Sometimes insurers assign people to the plant.

p. 71. Litigation much cheaper.

(*) p. 77. Give more prominence to seat belt.

Steve/Susan/Greg:
Text "studies of teenage drunk driving ... 1,000 fewer deaths ...."

First of all, we are talking about a SINGLE study. This study was written by a man at Kean College, it is a National Bureau of Economic Research working paper. Unless we are sure that this is a good paper (I am a bit suspicious, Darrel is looking it over) I am reluctant to let such a specific and strong statement rest only on this evidence. If we have any additional evidence, I would like to see it.

Thanks,

LISA

To check

✓1. DeMuth - are the tables coming out?

✓2. Recession dates. [not valid]

✓3. Table 2 - Source? Alcohol? Check with McGinnis [Susan]

✓4. I think the TCA example has to go entirely for reasons of
   (a) Space
   (b) Nowhere else does it fit.

✓5. Coal power vs. nuclear power for worker safety - p. 12.

6. Monsanto case. } Darrell

✓7. Fed Reg. 6/26/86 } Darrell

✓8. Recession dates.

✓9. p. 14 Total spent on medical in US, 1985

✓10. Susan: when did the fraction of adults who smoked begin to decline? After the ban, was the decline at a slower pace?

✓11. Lisa: Work accidental death rates vertical when OSHA Established? When CPSC established?

✓12. Speed limit diversion of resources away from where enforcement should be concentrated. Police resource argument.

OSHA.

Frank Frodyma

523-8021

COB on Monday for comments.

Smoking - Survey.
Army - GSA + what they are doing.

Table 2. Overlaps very important.
Auto - more tradeoffs.

Reckless driver problem. Law doesn't constrain.

Bob Machol of FAA.
Specific suggestions from Engen.

"Recreational flyers" wrong. Should use "general avaition."

Whole first 5 pgs. should be rewritten.
Lowrance - Acceptable Risk
"How Much Safety" by Machol.
Distinction between risk & safety.
Risk - objective; safety is subjective.

No clear distinction between risk + safety. Safety is the subjective willingness to accept risk. Risk is an objective measure.

Actually, speaks to the survey issue on p. 2. This might be good stuff to include.

~~[illegible]~~ Worrall

1. 43+47 – It's the uncertainty of awards, not the variance.

2. Some people want less safety.

3. Info – main thing is word of mouth. Include.

4. p. 53:

5. Should not say new drug "safe." Should say "meets acc

{Ted Barrett } Commerce: 377-2101
{Jane Mulloy } 377-5926

Working on tort liability WG.

TORT SYSTEM.

Strict liability. Courts did apply in the early 60's. Has to be fault to apply strict liability. Absolute liability in case of very risky activitities. (storing dynamite.) Strict liability - burden shifted to mfg. who has to show he did not make a defective product.
Lawnmower. Few cases where the liability is assigned

We are suggesting that mfg. would be held liable if nothing were done wrong.
* Strict liability could be applied only if there is a defect in the product when it leaves the mfg.

Doesn't think it is plausible that strict liability reduces incentives to safety. They think nobody is thinking about this. They think this is entirely implausible.

Not a conscious choice.

"Contributory negligence" will be a defense in strict liability. Can be a good defense for mfg.

In some states, contributory negligence is a complete bar to mfg. liability. Comparative negligence is a splitting up of negligence because of relative negligence. 30 States now have comp. negligence. This is the one that results in allocation.

p. 35: Case is either negligence or strict liability. Strict liability is a defect, not knowing how it got there.

"Standard of care" has a meaning of its!

The "Hand formula" is obscure. They have not heard of it. Pinto situation? Cost of fixing it would have been greater than the cost of the accidents.

Train example: Given 1 accident/yr., will cost them ⌊ Example is wrong.

Look at Pinto example. ~~Cost~~ 1 car in 100 in an accident. Cost of the accident compared to cost of repairing all.

p. 39: Public fear appears to be irrational the way it is written.

! ACTIVITY LEVEL out of TORTS.

Liability Insurance Crisis.

① Soften first sentence.

② p. 41 – "Many" instead of "most"

Is insurance pricing practices? Interest rate?

Before end of 1984, they did cash flow underwriting. As much business as possible so they could make investments. When interest rates went down, they had to switch from being a financial system to being an operating co.

Some price-cutting is now going on again. Nurse midwives are now starting to be able to get insurance again. But there was political pressure for this.

p. 42. Strict liability <u>is</u> fault-based.
"Enterprise liability" is a European concept — Mfg. could not have known about ~~affect~~ defect, but he is still liable. Have not seen used here.

[Justice Traynor. Mfg. in best position to absorb cost, + could spread cost across all products. In 74-75, cost of ins. went up.

Consumer should not have to find the person on the assembly line who caused the defect (which they say is necessary for strict liability).

Lots of horror stories — Not always verifiable. The two guys who picked up the lawn ~~[illegible]~~ mower to cut the hedge. Totally apochryphal. Many of these stories don't track back.

~~[illegible]~~

(*) Strict liability ≠ No-fault. Same objection as before.

There has been a move towards strict liability. But this is not the same as moving towards no-fault. They think there have not been many outrageous awards that have been upheld.

Some courts have interpreted insurance contracts in strange ways – "Sudden + accidental" spills. Seepage over 10 yrs. have been found as a cause for insurance liability. On toxics the insurers just don't know their exposure.

IND – insurers very wary about insuring other mfgs.

Joint + Several Liability – Old doctrine Who can pay? Auto accident caused in part because of a pothole or a bush.

Plaintiff's atty. has obligation to bring in everybody.

DOJ would throw it out.

J+S liability has always been applied to tort cases. Not a new develop.

municipalities — which have lost immunity — this is new. Over a period of time, they have lost that immunity. Civil right cases, etc.

p. 45: "exorbitant terms" — Some people do in fact settle because of Jrs., but not exorbitant.

Mkt. share. liability. DES in CA. Way of compensating the plaintiffs. Mfgs. put a defective product on the mkt. [I asked them why they say DES was defective. They didn't know.]

Toxic torts a whole another problem

p. 45 8.9 % growth figure. Cite for this.

p. 46. The million dollar verdicts are misleading. Cost of the medicals are very high. Loss of limbs, quad. etc. The million dollar awards may be being used here as a scare device. Medical prices have risen faster than CPI. So that should be figured.

1st million dollar award was an actor in CA who had been defamed. It was in 1962, and was cut down to 400,000. The big awards often don't stand up.

Tort Reform: No evidence of correlation between tort reform + lower prices. FL, no correlation
Effects will be far down the line.

p. 47: "Main rationale" – is that correct. They think it is to bring down price of ins.

DOJ may have got it wrong.

p. 48. In proposal of Adm., provide for strict liability in a case of mfg. defect. Failure to warn, design, etc. have to have negligence. But they say most state laws have strict liability is fault-based. Needs restatement.
Would throw out "enterprise liability."

>100%

p-70 Workers' Comp. Usually tied to state average wage. Services wage low.

p. 69 ATC example. Which is the causation. Did they file for disability **because** they were having near ~~misses~~ misses.

DoJ not as clear. Gives impression that strict liability = no fault. They do not make it clear.

12/19/86

Ted Barrett — Hand formula — 1947
admiralty case. Subsequently backed
away from it. In 1940 he laid out
the 3 factors + said they were not
subject to any quantification. But
he did backed off from doctrine
because he said it couldn't be done.

John Carson with CEQ.
Calling re: biotechnology. Concerns about the section. People from a couple of agencies calling about it. Will be back on Monday.

FDA

Bob ~~[illegible]~~ Navazio 443-5133
Mike Kogan.

Lots of problem.
Kefauver imposed the 180 day deadline for new drugs, did not ~~[illegible]~~ remove it.

(*) Better story. FDA by law not allowed to look at economic benefits. Required by law not to look at benefits.

Discussion of regulation of new drugs omits Waxman - Hatch Law of 1984. One of First major changes of food + Drug laws. That element is missing from this.

What is the purpose: If to show what the Adm has done, we have much better news.

Adm. successes — at end, not of efforts to streamline the process.

Haven't actually reduced the approval time ~~[illegible]~~ by 40%.

Policy of Adm. – FDA is one example of necessary public health + safety requirements.

– Doing the test right or simply allowing the ~~experimenta~~ experimental drugs out on the mkt.

New Drug Section – Adm. Critics would have a field day. We are always trying to streamline the process without sacrificing safety for speed, or lives for dollars, etc.

Generic drugs can now get approval w/o full safety + effectiveness

p. 54. – No prob.
p. 55 – "must balance" – may not balance.
Legislation
must determine whether the law is safe + effective before new drug can be marketed (FDA). This means that FDA, by statute, cannot take account of expected
economic effects of new drugs.
Do have to do risk-benefit analysis. But it is to be done in clinical terms.
~~#~~ Weigh therapeutic benefit against therapeutic costs. [How different is this from economic risk-benefits.]
Balancing therapeutic benefits and risks.

What did we say that was different?
The problem is with the terminology. Cos. use the terminology in terms of π of companies themselves. How much the company has invested, how many jobs — advanced on the Hill, HHS, etc. Overall investment in the drug is given as evidence of its effectiveness.

Funnel all the NDA's through 200 FTE @ FDA.
User fees for increasing the staff.
Impose a user fee + go out + speed up the

(4) process. Leg. proposal has been submitted for user fees.

~~Notes~~

p. 55. – Critics argue that – Over statement. People in the process do not believe that they are making conservative judgments. In some individual cases, it does happen. People in the review process are subject to amazing workload pressure.

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p. 55. Take positive approach. The net effect of the factors above means that unnecessary delay is costly, which is why the Adm. has sought to streamline the process. Then here, not in the Adm. efforts to streamline the process. Last ¶ expanded.

Next ¶ does not say it well.

With AIDS – law ~~allows FDA to make~~ requires New Drug Application. If a co. begins studying AZT, still faces 4-5 yr. process. That is really needed to know what to do.

When FDA knows the drug is safe, make it available on a "compassionate" basis. Burroughs able to charge at cost, but

So, there is flexibility in the new drug approval process. Compassionate IND process.

There is flexibility for being more risk-taking, i.e. Rewrite the A.
Unapproved new drugs are banned from sale, but not from use.

FDA argues that some drugs appeared overseas before in U.S., but converse is also true

US has ~~and~~ approved more chemical entities than UK + Sweden over the last few yrs.

Quality of review in U.S. means something in economic terms. Better quality.

Good reflection in the Adm.

John Morrall

p. 11 - Refer to Reg plan. pg. XXII -
don't want absolute consistency.

p. 36. - Drop numeric example.

- Mkt. failures? Higher quit rates in
riskier industries.
Disentangle risk premiums from other source of
wage variation. Info. question.

p. 77 ER - Burgeoning of tort cases on
externalities. Key is the transactions costs.
(1) Hard to identify the cause
(2) Hard to organize the class of those hurt.
- Has to be something in it for the lawyers.
If you just want relief, nothing in it
for the lawyers.
(3) Causation problem.

Check this + make the transactions cost
argument.

Experience rating + ins. rates. Use the term
"controllable"

(*) We should say torts are <u>inefficient</u> insurance because of the high transaction costs. Add this.

Take out "unintentional" wrt

p. 3: per Hundred Million Vehicle miles

p. 3: add 1970 # to home accidents + work accidents — pre OSHA.

p. 15: what is "double the lung cancer risk."

p. 23: Drinking age increase contrary evidence.

p. 38 16 times greater sounds too low

Diewald.
Too long, too many examples.
Doesn't like title — what kind of risk?
Define tort.
Principles first, examples later.
"However" too much.

Point of Interest to DOT

I. World getting safer with Economic Growth.
- includes autos

II. Principles of Risk Mgt.
- Consistency of regs across agencies
- Cost per life saved - State highway depts. & NHTSA appear to use numbers on the low side.

III. Personal responsibility
- Smoking
- Auto safety
  - Drunk driving
  - Safety belts - we're for them. & will note dramatic recent increase in use.
  - 55 MPH - We're for speed limits; dubious about a single natl. std.
  - CAFE. (We're against it.)

IV. FAA stuff (controversial)
- Air TC disability
- Free space + G.A. overuse. - This may go.

(1) Transponders
(2) Peak-hr. landing fees.

Executive Order for safety belts — give it more prominence.

Walt Francis called me, Dec 23

The God Awful thing:

Air traffic controllers

Press will go crazy.

Maybe true, but don't say it!

Politically very very bad.

~~Is~~ willing to talk about drugs.

Sharon Goldstein — NHTSA
Drunk Driving
55 mPH. → 366-2870

COB. Wednesday.

Queries on the #s. Their counsel will be in touch with Susan re: this stuff. We will have written comments by COB <u>Tuesday</u>.

Study - Job impact of joint venture.
General industry + employment
report.

523-8021 OSHA
Frank Frodyma by SOB Tuesday.

Teoria Lema. CPSG.
Do indivi

12/22/86

Jack Campbell – Acid rain major problems. 2 points.
(1) Some of science inconsistent with NAPAP Reports
(2) Do we want to say something about the miners? May want to say something about equity, etc.

Dwayne Winters – 382 – 7407

Ozone Report – Steve Sidell 382-2787

Jack Campbell

Rm 9222 @ DOT

Joe ~~[illegible]~~ Canny — DOT   366-4220

FAA p. 69. Lots of indigestion

Implications of something built into system that might be causing problems.

Has there been a change since the 1970's? There was a generous program until about x yrs. ago.

FAA argues that even at that time, there was no inducement to

Will be in on Monday.

Joe Canny — FAA continues to object to the language in ATC. Controllers have been filing spurious claims. Claim controllers who filed claims were overreporting. Both current and at time period of the study.

At one time, they provided "traumatic leave." 6-weeks off for anyone involved in a near miss.

Claims way down since 1970s.

Controllers cannot now shop freely for Drs. Only FAA certified Docs. Known to the FAA.

Assoc. Adm. did not make reference to the data.

Study deals only with events <u>reported</u> by claimants. Data have to be reported to <u>FAA</u>, but not necessarily data reported to OWPC. Controllers who were seeking compensation were reporting disproportionately to OWPC. e.g., they reported more errors to OWPC, not to FAA.

Dwayne Winters EPA
382-7407

(1) Toxic wastes?

GK

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12/17/86 ACTION/CONCURRENCE/COMMENT DUE BY: C.O.B. December 19th

SUBJECT: 1987 ECONOMIC REPORT OF THE PRESIDENT - CHAPTER 6; RISK AND RESPONSIBILITY

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	MILLER - ADMIN.	☐	☐
REGAN	☐	✓	POINDEXTER	☐	☐
MILLER - OMB	☐	☐	RYAN	☐	☐
BALL	✓	☐	SPEAKES	☐	☐
BARBOUR	☐	☐	SPRINKEL	☐	✓
BUCHANAN	☐	☐	SVAHN	✓	☐
CHEW	☐P	✓S	THOMAS	☐	☐
DANIELS	✓	☐	TUTTLE	☐	☐
HENKEL	☐	☐	WALLISON	✓	☐
KING	☐	☐	GRAHAM	✓	☐
KINGON	✓	☐		☐	☐
MASENG	☐	☐		☐	☐

REMARKS:

Please provide any comments/recommendations directly to Stephen DeCanio, Rm. 314, x3114 by c.o.b., Friday, December 19th, with an info copy to my office. Thank you.

RESPONSE:

Changes that cite state government participation are recommended. (See marked pages.)

Andy Card
for Mitch Daniels
12/19/86 1:00pm

David L. Chew
Staff Secretary
Ext. 2702

health and safety characteristics of products, such as the Surgeon General's warning on cigarette packages. Government can certify the competence of providers of services, as in the licensing of physicians and pilots, although other methods of eliciting information on competence could be devised.

Government also is involved in risk and safety regulation
Add reference to "state governments'" role to this paragraph.
directly, through agencies such as the Consumer Product Safety Commission (CPSC) and the Occupational Safety and Health Administration (OSHA). There are several justifications for a government regulatory role. One is that consumers may lack the information to assess particular risks accurately. According to this view, consumers may demand too little safety when they buy products or engage in certain risky activities. A second rationale is that an individual or firm may fail to take full account of harms imposed on others. The tort system may not be able to force a person to bear these costs, either because the person's wealth is insufficient to compensate for the potential harm, or because it is difficult to identify him as the cause of

the harm. Third, government regulation frequently is used to correct risks associated with environmental externalities.

PRINCIPLES OF GOVERNMENT RISK MANAGEMENT

Refer to "state governments'" role to this section.

Although exercise of personal responsibility is the primary means by which individuals can control the risks to which they are subject, government policy must be concerned with the rational and efficient management of some risks. The first step in this process involves risk assessment, which is the scientific determination of the probabilities of harm posed by various courses of action. The next step is risk management, the determination of the appropriate policy response to risk. Ideally, the two functions are separated operationally, to ensure that the scientific judgments that form the basis of the risk assessment are not influenced by a balancing of costs and benefits, which belongs properly to risk management.

Efficient risk management must weigh and assess the relative costs and benefits of reducing particular risks. A reasoned

CONCLUSION

It is important that the government's policies towards risk do not overlook opportunities to foster personal responsibility. Just as it is not possible for the government to eliminate all risks, it is not desirable for the government to attempt to reduce risks at high cost that could be controlled more efficiently in other ways. In many cases, the socialization of risk is neither efficient or effective. People vary in their willingness to bear risks, and markets are an effective means of conveying information about risks and of matching individuals' risk preferences and their behavior. Markets and the tort system provide powerful incentives for reducing risk. The greatest risks are associated with activities that are subject to personal control; thus the role of government in risk reduction must be secondary to exercise of informed individual choice.

ADD:
State Governments appropriately play a dominant role in determining public policies that best address risk management and reponsibility. That role should continue to be respected.